

I. BACKGROUND

The Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing of safety sensitive employees in the aviation, motor carrier, railroad, and mass transit industries. This Act requires all operators of commercial motor vehicles (CMV'S) subject to the commercial driver's license (CDL) requirements to be tested for controlled substances and alcohol. U.S. Department of Transportation regulations require that school bus drivers as well as drivers of private carriers of passengers be required to submit to alcohol and controlled substance testing. For the most part, CDL employees are school bus drivers. However, teachers, coaches, and other school district employees who drive activity buses are also required to have a CDL and therefore fall under the drug and alcohol testing rules. In short, all drivers required to have a CDL are subject to the U.S. Department of Transportation regulations and this policy. The final rules by the U.S. Department of Transportation and the Federal Highway Administration were published in the February, 1994 Federal Register and generally require implementation beginning on January 1, 1995 for employers with fifty (50) or more CDL employees and January 1, 1996 for employers with forty-nine (49) or less CDL employees.

II. POLICY OVERVIEW

The purpose of this policy is to establish guidelines for mandatory drug and alcohol testing for all school district employees/drivers required to have a commercial driver's license (CDL).

Crook County School District #1 recognizes that the influence and/or use of drugs, including alcohol, is capable of threatening the safety, welfare and well-being of both students and other employees and will not be tolerated. The safety and security of CCSD#1 employees and students will be maintained as a high priority and CCSD#1 is committed to providing an alcohol and drug—free work environment for the safety of its students and employees.

The possession, use, transfer and/or sale of alcohol and/or any illegal drug or controlled substances while on duty or on school district property is strictly prohibited. Being under the influence of alcohol and/or any illegal drugs or controlled substances while on duty or otherwise contrary to the policies established herein is also strictly prohibited.

The U.S. Department of Transportation regulations require testing for five (5) drugs, to-wit: marijuana, cocaine, opiates, amphetamines/methamphetamine, and phencyclidines. The drug testing requires split urine sampling of each CDL employee (two urine samples taken at the same time). The regulations also call for an alcohol test using an evidential breath test (EBT) device similar to the kind used by law enforcement agencies. The regulations also specify five (5) types of drug and alcohol testing for all school district employees who are required to have a CDL and these include pre-employment testing, random testing, post-accident testing, return to duty/follow-up testing, and reasonable suspicion testing. The procedures and circumstances under which alcohol and/or drug testing are to be conducted by CCSD#1 are more specifically addressed and set forth herein.

III. ALCOHOL TESTING: AN OVERVIEW

Alcohol tests are required as follows: pre—employment screening, post—accident testing, for reasonable suspicion, on a random basis, and upon return to duty/follow-up. The specific alcohol-related conduct which prohibits performance of the subject employee's functions include having a breath alcohol concentration of 0.02% or greater; using alcohol while in the performance of the subject employee's duties; performance of the subject employee's duties or function within four (4) hours after using alcohol; and refusing to submit to an alcohol test and using alcohol within eight (8) hours after an accident or until tested.

Breath testing will be performed using an evidential breath-testing device approved by the National Highway Traffic Safety Administration. Two (2) breath tests are required to

determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02% alcohol concentration is considered a “negative” test. If the alcohol concentration is 0.02% or greater, a second confirmation test must be conducted. Drivers who engage in prohibited alcohol conduct (i.e. a breath alcohol concentration of 0.02% or more) must be immediately removed from their safety-sensitive functions. Drivers who have an alcohol concentration of 0.02% or greater when tested just before, during or just after performing safety-sensitive functions will be removed from performing their duties for twenty-four (24) hours. If a driver’s behavior or appearance suggests alcohol misuse, a reasonable suspicion alcohol test must be conducted. If a breath test cannot be administered, the driver will be removed from performing safety sensitive duties for at least twenty-four (24) hours. In the event the employee’s confirmation test registers 0.04% or greater, the employee is subject to disciplinary action, including, but not limited to suspension and/or termination.

IV. DRUG TESTING: AN OVERVIEW

The drug testing rules cover the same employees as the alcohol testing rules and the types of tests required are: pre-employment, reasonable suspicion, post-accident, random, return-to-duty/follow-up drug testing. Testing is conducted by analyzing a driver’s urine specimen for the following drugs: marijuana, cocaine, opiates, amphetamines/methamphetamine, and phencyclidines. The testing is a two (2) stage process requiring a split sample. First, a screening test is performed and, if it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug. All drug test results are reviewed and interpreted by a medical review officer (MRO), before they are reported to the employer. Any unauthorized use of the drugs and controlled substances set forth herein are prohibited. The illicit use of drugs by safety-sensitive employees/drivers is prohibited on or off duty. As with an alcohol misuse violation, a subject employee must be removed from his/her safety—sensitive duty if a positive drug test results. The removal will not take place until the MRO has interviewed the driver and determined that the positive drug test results are from the unauthorized use of a controlled substance and no other limited and/or legitimate medical use or explanation exists. The subject employee cannot be returned to his/her safety—sensitive duties until he/she has been evaluated by a substance abuse professional or MRO, has complied with recommended rehabilitation, and has a negative result on a return-to-duty drug test. Follow-up testing to monitor the subject employee’s continued abstinence from drug use may be required.

V. REQUIRED TESTING

The following test(s) shall be required by the school district of all applicants and employees subject to testing pursuant to this policy:

A. Pre-Employment/Job Applicant Testing

All applicants for positions and employees transferring from a non-safety sensitive position to a safety sensitive job for the first time with the school district requiring a CDL and/or otherwise covered by this policy will be required to undergo drug and/or alcohol screening prior to their employment. All such job applicants and employees will be informed of the district’s alcohol and drug testing policy and a copy of the policy will be made available upon request. All such applicants and employees will be informed in writing prior to any drug and/or alcohol screening that such tests are required and that their employment is conditioned upon passing such test, and conditioned upon any and all future tests administered pursuant to this policy. If an applicant’s or employee’s initial drug and/or alcohol test is positive, a confirmation test will be conducted if requested by the applicant at his/her expense. If a confirmation test is requested, no action on the applicant’s or employee’s employment will be taken until the results of the confirmation test are available. In the event an applicant’s or employee’s initial drug and/or alcohol test is positive for alcohol or illegal drugs or, if requested, an applicant’s or employee’s confirmation test is positive for alcohol and/or illegal drugs, the applicant or employee will not be employed. Upon written request, a copy of the

confirmation test will be supplied to the applicant or employee.

B. Random Employee Testing

To maintain the school district's priority of assuring the safety, health and well being of students, employees and the traveling public, the school district retains the right to randomly test for alcohol and/or illegal drugs on all employees who are covered by and/or subject to this policy. The Department of Transportation regulations require that annually the number of random tests equal fifty percent (50%) of the number of employees in the random testing pool for drugs and ten (10%) for alcohol. Random testing shall be conducted on at least a quarterly basis, but may, at the option of the employer, be conducted more frequently (i.e., monthly, bi-weekly or weekly). Any subject employees selected for random testing shall be assured that his/her selection does not mean that the district suspects usage of alcohol and/or illegal drugs. The process by which employees will be selected for random testing will be decided by the company in charge of testing. In the event an employee is unavailable for testing on the assigned date, he/she will be tested on the next drug testing date. If the employee's confirmation test is positive for abuse and/or untimely use of alcohol and/or controlled substances or drugs, he/she will be subject to discipline which discipline may include termination. Any refusal to submit to a random test shall be treated as a positive test resulting in the termination of the subject employee.

C. Reasonable Suspicion Test

Any supervisor of an employee subject to this policy who has reasonable suspicion that an employee under his/her supervision is guilty of abuse and/or untimely use of alcohol and/or controlled substances or drugs, may require the employee to undergo a drug and/or alcohol test. Reasonable suspicion may be based and include, but is not limited to, an employee's observed behavior which is indicative of drug and/or alcohol use; reports from a reliable source of suspected drug use and/or possession or use of drugs and/or alcohol; unexplained frequent absences, tardiness, mood swings, or the failure to follow directions. When a supervisor reasonably suspects the abuse and/or untimely use of alcohol, drugs or controlled substances by a subject employee, the supervisor shall follow the following process, to-wit:

1. Solicit an explanation from the employee for any behavior which creates a reasonable suspicion of a violation of this policy.
2. If the employee cannot satisfactorily explain the behavior, the supervisor may request the employee to undergo a drug and/or alcohol test.
3. If the employee agrees to be tested, he/she will complete the school district consent form and a specimen/test result will be obtained.
4. If the employee refuses to undergo the test or complete the consent form he/she will be advised that such refusal constitutes a ground for immediate termination. If the employee still refuses to cooperate, he/she will be directed to the superintendent's office.
5. If the employee's initial drug and/or alcohol test is positive, a second confirmation test shall be immediately administered. If the employee's initial drug test is positive, the employee will be placed on paid leave of absence pending a confirmation test of the employee's specimen if there is a delay between the initial test and the confirmation test. If a positive drug and/or alcohol test is not confirmed, the employee's pay and job status will be restored.
6. If the employee's confirmation test is positive for abuse and/or untimely use of alcohol controlled substances and/or drugs, he/she will be disciplined which discipline may include termination.

D. Employee Post-Accident Testing

The school district shall require an employee to undergo drug and/or alcohol testing after an accident in which the employee is operating a vehicle owned, leased or rented by the school district if (1) there is a fatality; and/or (2) one or more persons requires medical treatment either at or away from the accident scene; and/or (3) one of the vehicles must be

towed from the scene or the property damage to any vehicle is estimated to be in excess of **\$1000**; and (4) the school district employee receives a citation arising from the accident. In such case, the procedure set forth in the reasonable suspicion testing will be followed, except that the employee shall be advised that such tests are required as part of the accident investigation. If the employee's confirmation test is positive for abuse and/or untimely use of alcohol, controlled substances or drugs, he/she will be disciplined, which discipline may include termination. If the employer refuses to undergo the requested test or complete the requisite consent form, he/she will be advised that such a refusal constitutes a ground for immediate termination.

E. Return to Duty/Follow-up Testing

Any employee who is allowed to return to duty either under this policy, or any other school district policy, after engaging in conduct prohibited by this policy (i.e., following the abuse and/or untimely use of alcohol and/or controlled substances or drugs) shall undergo either a return-to-duty alcohol test, with a result indicating an alcohol concentration of less than 0.02% and/or shall undergo a return-to-duty controlled substance test with a result indicating a verified negative result for illegal drugs/controlled substance use. In addition thereto, the employee shall be required to submit to unannounced follow-up alcohol and/or controlled substance/drug testing upon the request of his/her supervisor. Follow-up testing may be conducted when the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing safety-sensitive functions.

VI. ALCOHOL TESTING PROCEDURES

A. All alcohol breath tests shall be conducted on an approved evidential breath testing device (EBT) by a trained breath alcohol technician (BAT). A BAT - qualified supervisor of an employee — may conduct the alcohol test for that employee only if another BAT is unavailable to perform the test in a timely manner. EBT's shall be able to distinguish alcohol from acetone at the 0.02% alcohol concentration level and shall be capable of testing an air blank prior to each collection of breath and performing an external calibration check. In order to be used in either screening or confirmation alcohol testing, an EBT shall have a quality assurance plan (QAP) developed by the manufacturer. Breath alcohol testing will be conducted at a location that affords visual and oral privacy to the employee being tested sufficient to prevent unauthorized persons from seeing or hearing the test results. All necessary equipment, personnel and materials for breath testing shall be provided at the location where testing is conducted. In some unusual circumstances, such as when it is essential to conduct a test outdoors at the scene of an accident, a test may be conducted at a location that provides visual and aural privacy to the greatest extent practicable. When the subject employee enters the alcohol testing location, the BAT will require said employee to provide positive identification. The BAT shall explain the testing procedure to the employee. The procedure to be followed by the BAT for a screening test is as follows:

1. The BAT shall complete Step 1 on the breath alcohol testing form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.
2. An individually sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions.
3. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath test form in the designated space, using a method that will provide clear evidence of removal.
4. If the EBT prints the test results directly onto the form, the BAT shall show the

- employee the result displayed on the EBT.
5. In any case in which the result of the screening test is a breath alcohol concentration of less than 0.02%, then the BAT shall date the form and sign the certification in Step 3 of the form.
 6. No further testing is authorized. The BAT shall transmit the result of less than 0.02% to the employer in a confidential manner, and the employer shall receive and store the information so as to ensure that confidentiality is maintained.
 7. If the result of the screening test is an alcohol concentration of 0.02% or greater, a confirmation test shall be performed as provided herein.

B. Procedures for confirmation tests

1. The confirmation test shall be conducted within twenty (20) minutes of the completion of the screening test. The BAT shall instruct the employee not to eat, drink, put any object or substance in his/her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test and shall not be less than fifteen (15) minutes. The BAT shall explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol leading to an artificially high heading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with the instruction, the BAT shall so note in the "Remarks" section of the form.
2. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registered 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.
3. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under this policy shall be based.
4. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form, and the employee shall date and sign the certification in Step 4 of the form. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
5. The BAT shall transmit all results to the school district in a confidential manner.

C. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the "Remarks" section of the form. The testing process shall be terminated and the BAT shall immediately notify the employer. In the event an employee is unable, or alleges that he/she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, the BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the employer. If the employee attempts and fails to provide an adequate amount of breath, the employer shall proceed as follows:

1. The employer shall direct the employee to obtain within 5 days of the attempted test an evaluation from a licensed physician who is acceptable to the employer concerning the employee's medical ability or inability to provide an adequate amount of breath. If the physician determines in his/her reasonable medical judgment that a medical condition has, or with a high degree of probability could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall

not be deemed a refusal to take a test. If a licensed physician is unable to make such a determination, the employee's failure to provide an adequate amount of breath shall be regarded as a refusal.

2. In the event the employee's confirmation test register 0.04%, or greater, the employee is subject to disciplinary action including, but not limited to, suspension and/or termination.

VII. DRUG TESTING PROCEDURES

To ensure that the appropriate chain of custody and specimen control is maintained, the collection of urine specimens will proceed as follows:

1. Upon the employee's arrival at the designated collection site, the collector will request the employee to provide positive identification. The employee will be required to complete a pre-test information form which serves as an identification document for the specimen collected. This form will request information regarding the employee's use of prescription and non-prescription drugs which may affect the outcome of the test.
2. The collector will be of the same sex as the employee when direct observation is required. The employee will be required to remove any unnecessary outer garments and to leave outside the collection area any purses, briefcases, or similar items. The employee will be required to wash and dry his/her hands before the test is administered. The employee will then remain in the presence of the collector and not have access to water fountains, faucets, soap dispensers, cleaning agents, or any other material which could be used to adulterate the specimen. Any transfer of the specimen from the collection container to another specimen bottle will be observed by the donor.
3. The donor shall urinate into a collection container or a specimen bottle capable of holding at least 55 ml. If a collection container is used, the collection site person, in the presence of the donor, shall pour the urine into two specimen bottles. Thirty (30) ml shall be poured into one bottle, to be used as the primary specimen, and at least fifteen (15) ml shall be poured into the other bottle, to be used as the split specimen. Both bottles shall be shipped in a single shipping container together with copies one, two, and the split specimen copy of the chain of custody form, to the laboratory.
4. If the test result of the primary specimen is positive and/or considered a refusal due to adulteration or substitution, the employee may request that the medical review officer (MRO) direct that the split specimen be tested in a different Health and Human Services (HHS)-certified laboratory to reconfirm the presence of the drug(s), adulteration or substitution obtained in the primary specimen. The MRO shall honor such a request if it is made within seventy-two (72) hours of the employee having been notified of the primary test result. When the MRO informs the laboratory in writing that the employee has requested a test of the split specimen, the laboratory shall forward to a different HHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries. The result of the test of the split specimen shall then be transmitted by the second laboratory to the MRO.
5. Any action required by D.O.T. agency regulations as a result of a positive drug test (i.e., removal from performing a safety-sensitive function) is not stayed pending the result of the test of the split specimen. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the cancellation and the reasons for it to the D.O.T., the employer, and the employee.

6. Any employee required to submit a specimen pursuant to random employee testing, reasonable suspicion testing and/or post-accident testing, will be required to submit a urine sample before being relieved of duty. Employees covered under these three sections who do not produce an adequate specimen will be in violation of this policy and subject to disciplinary action including, but not limited to, suspension without pay and/or termination.
7. The identification label(s) on the specimen bottle shall contain the date of collection, the name of the collection official, and required identifying information. The employee providing the specimen shall initial the label on the specimen bottle, using initials corresponding with the name on the chain of custody form. The employee providing the specimen will be asked to read and sign a certification statement certifying that the urine in the specimen bottles came from his/her body at the time of collection. Refusal to sign this statement will be noted on the certification statement form by the collector. Refusal to sign this statement, without justification, may result in disciplinary action up to and including termination.
8. Upon notification by the drug program facilitator that an employee has failed to appear for his/her scheduled collection, the supervisor will discuss with the employee the reason(s) for failing to appear. If the employee provides a legitimate reason for failing to report, no disciplinary action will be taken. If the employee does not provide a legitimate reason for failing to report, the additional disciplinary action including, but not limited to, suspension without pay and/or termination may be taken.
9. In the event an employee refuses to provide a specimen, the drug program facilitator and/or the employee's supervisor shall advise the employee that refusal to provide a specimen shall result in termination. In the event the employee still refuses to provide a specimen, the employee will be terminated.
10. In the event an employee fails to provide a sufficient quantity of urine (i.e., at least forty-five (45) ml), the drug program facilitator and/or the employee's supervisor will meet with the employee to see if he/she has a legitimate reason for not providing a sufficient specimen. If the employee has a legitimate reason, he/she will be required to take the drug test within twenty-four (24) hours. If the employee does not have a legitimate reason, the employee will be recommended for suspension or termination.
11. All applicants and employees have the right to refuse to undergo drug testing as provided herein. Applicants who refuse to undergo such testing will be denied employment. Employees who refuse to undergo such testing will be terminated. All employees and job applicants will be advised of the CCSD#1's drug testing program. Notice of the program will be posted on employee bulletin boards and copies of the program will be available for job applicants and employees to review. Any employee may appeal his termination or other disciplinary action taken under this policy to the extent and in the manner any such appeal is authorized by board policy and/or appropriate state law.

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